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EXAMINER				
BROWN, RUEBEN M				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/026,872

Applicant(s)

HOUSTON, JOHN S.

Examiner

REUBEN M. BROWN

Art Unit

2424

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-98 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-98 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that the previous combination of Davis, in view of Astiz does not meet the claims as currently recited. Nevertheless, applicant does acknowledge that Davis teaches a tracking program (which reads on the claimed software agent that performs a method using a processor to obtain information identifying electronic media...), since applicant argues on page 17 that "it is the tracking program described in Davis, not a media handler that performs media research tasks".

Davis briefly mentions the use of a plug-in helper application, col. 8, lines 42-47, (which were generally known to be used at the time the invention was made, to display video programming that the web browser was able to decode/display). However, it is true that Davis does not explicitly discuss that the plug-in/helper application, perse, could be configurable to perform a media research task. Examiner nevertheless points out that the newly amended recitation, '*configurable to perform a media research task*' is broadly claimed, and does not provide any definitions that limit the scope of the media research task performed, other than that the '*task is associated with the handling of the electronic media*'.

Thus, even though the tracking agent of Davis measures the exposure of the individual to the electronic media, by measuring the time that the individual has viewed a particular media, (which includes the claimed '*information identifying the electronic media*') Davis is missing a teaching that the tracking program obtains the '*information identifying the electronic media*' from a media viewer/media player/plugin or helper application, i.e., the claimed '*cooperative media handler*'.

Astiz was presented in the previous rejection, which teaches a viewer 31 which is enlisted by the browser 32 to play video that has been received in a format that the instant browser cannot display, see col. 4, lines 4-48; col. 6, lines 1-18. Thus, the viewer 31 of Astiz clearly reads on the claimed '*cooperative media handler*', since the viewer 31 processes the video and displays it on the screen. Applicant's argument against Astiz appears to be that, "Astiz does not teach or suggest a cooperative media handler that performs a configurable media research task that is associated with the handling of the electronic media..."

Examiner respectfully disagrees and points out that the viewer 31 is not a standard, ordinary viewer, but instead is a specialized viewer that will accept BTV MIME files, see col. 6, lines 18-20. Thus, the viewer 31 of Astiz is at least configurable to allow a certain type of video data to be displayed, and also to record the x, y, t information that defines a user's interactive selection of a hot spot within the viewer 31. Furthermore the software within the viewer 31 is configured to pass this information onto the browser 32, col. 5, lines 18-25; col. 6, lines 31-33.

Thus media research task performed by the viewer 31 is met by the viewer 31 recording the x, y, t parameters and the URL/VHL that corresponds with user's selection of an Internet hyperlink, thus identifies the multimedia viewed by the user; and providing the information; see col. 4, lines 4-25; col. 6, lines 46-55; col. 11, lines 5-30.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 5-51, 53 & 55-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis, (U.S. Pat # 5,796,952), in view of Astiz, (U.S. Pat # 5,918,012).

Considering claims 1 & 50, the claimed method performed by a software agent of a first entity measuring the exposure of an individual to electronic media, comprising

'obtaining identifying information of the electronic media from a cooperative media handler', Davis discloses a JAVA applet tracking the display of media displayed by a browser, see col. 9, lines 15-45; col. 10, lines 11-65, col. 12, lines 12-50. Thus, in this embodiment of Davis, the claimed *'cooperative media handler'* corresponds with the "helper application" or

“plug-in”, (col. 8, lines 44-46) whereas the claimed ‘*software agent*’ corresponds with the tracking program, which may be implemented as a JAVA applet in Davis.

However, Davis does not specifically discuss that the tracking program could receive the identifying information from a media handler. Nevertheless, Astiz provides a teaching of a viewer 31 that is invoked by browser 32 in order to display video that the instant browser 32 is incapable of displaying, see col. 6, lines 5-30. The viewer 31 of Astiz corresponds with the plug-in/helper application discussed in Davis, and thus reads on the claimed ‘*cooperative media handler*’. The viewer 31 detects when a user makes a selection and records the x, y, t identifying information of the user's selection, as well as the URL/VHL identifying information that is associated with the selection and the associated media which is displayed for the user, which reads on the claimed ‘*media research task*’. It would have been obvious for one ordinary skill in the art at the time the invention was made, to utilize the plug-in/helper application of Davis in order to display various video content that the host browser is not capable of displaying, for the advantage of extending the capabilities of the client browser system to allow a wider range of video content to be displayed, as long as the appropriate instructions are located in the browser system, as taught by Astiz, see col. 4, lines 14-46; col. 6, lines 34-56.

Operating Astiz within the environment of Davis would provide for the viewer 31 of Astiz to make the identifying information available, as discussed in col. 11, lines 1-20. However, since the tracking program in Davis is the entity that receives the exposure information this

information from the viewer 31 would be passed on to the tracking program, which reads on the software agent.

As for the claimed method, *'using a processor'*, the recitation is broad enough to read on microprocessor 32 of Davis, which controls and is supported the entire PC system, including the RAM 34 into which the web browser is loaded, see col. 7, lines 50-63. Furthermore, Astiz discloses that the invention is carried out via a data processor 30, see col. 5, lines 51-65.

As for the additionally claimed limitation, *'defined interface that provides interoperability between the software agent and the cooperative media handler'*, even though Davis discloses that a tracking program may be installed along with a helper application/plugin, which requires at least some communication, the reference does not specifically discuss the operation of the plug-in/helper application. However, Astiz provides a disclosure of a defined interface (i.e., API, Application Program Interface) that operates between a browser and a viewer 31, see col. 11, lines 17-25. Astiz discloses that the viewer 31 must interface with the API of the browser in order to communicate the information, such that the viewer 31 corresponds with the claimed cooperative media handler. The use of the API is applicable between any two software entities that are exchanging information/messages.

It would have been obvious for one ordinary skill in the art at the time the invention was made, to provide a defined interface between any two software entities that communicate with each other, within a client system, as taught by Astiz, such as the helper application/plugin and

the tracking agent of Davis, at least for the known benefit of establishing a communication protocol that supports the interaction and insures reliable communication between the two instant software entities, which is the purpose of an Application Program Interface (API).

'providing at least a portion of the identifying information to the first entity' is met by Davis, col. 4, lines 36-65; col. 9, lines 35-38, teaching that the tracking program automatically sends the information acquired from the client back to the server.

Considering claims 3 & 53, the client in Davis that receives the web page information is part of an audience for the instant web page.

Considering claims 5-6 & 55-56, Davis teaches that the system may transmit the network ID, client ID (or a cookie of the client), which reads on the claimed *'identifying and authenticating an individual'*.

Considering claims 7-10 & 57-60, in Davis the claimed subject matter *'identifying information'* reads on the URL of a web page, which is used to identify the web page, col. 11, lines 18-22. Since the URL represents a network address & file name of the web page, the claimed 'metadata', 'presentation information', and 'contextual information' are also met, col. 8, lines 30-39.

Considering claims 11 & 61, the feature is met by Davis, col. 8, lines 64-67.

Considering claims 12-13 & 62-63, Davis teaches that other information concerning the client computer may be acquired, such as the type of hardware and the various resource resident on the client computer, see col. 9, lines 41-45. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made, to also identify the resources that actually processed/presented the content at the subscriber equipment, which the subscriber viewed and or interacted with, at least for the benefit determining the popularity of the instant resources utilized by the client.

Considering claims 14-19 & 64-69, the helper/plugin receives, decodes and presents data from wired and wireless networks, in real-time and extends the capability of its host, col. 6, lines 17-34; col. 8, lines 40-52.

Considering claims 20-21 & 70-71, the helper/plugin is 'mobile' is broad enough to read on the disclosure that software can be downloaded to the viewers 31, col. 6, lines 32-56. The helper, plugin is 'stable' is broad enough to read on the disclosure that the viewer 31 provides the appropriate application software to display certain video that cannot be displayed by the browser, col. 4, lines 15-48.

Considering claims 22, 24-26, 72 & 74-76 the media in Davis may be pre-recorded, but is experienced in real-time by the user. The viewer 31 in Astiz interprets & translates the data into a

format that may be viewed by the customer, col. 6, lines 5-45, which reads on '*decodes*'. As for the claimed 'pre-recorded electronic media', Davis teaches that some of the tracked information may have been cached at the client, col. 8, lines 21-30.

Considering claims 23 & 73, the claimed subject matter reads on the server updating either the tracking program or plug-in, by downloading the executable applications from the server, which means that the server can update the tracking program and change its operating manner, col. 10, lines 11-68; col. 14, lines 21-46. For instance, Davis discloses that in different embodiments the tracking program may be caused to monitor disparate information, such as the overall amount of information that is downloaded & displayed, with respect to the amount of bits, (col. 16, lines 41-67).

Considering claims 27, 48, 77 & 98, the client computer in Davis, (col. 6, lines 42-67; col. 7, lines 30-65) reads on the claimed Internet-enabled device.

Considering claims 28 & 78, the subject matter reads on the embodiment of the tracking program being a JAVA applet stored at the server B, col. 12, lines 12-55.

Considering claims 29 & 79, Davis does not teach the use of a smart card. Official Notice is taken that use of smart cards was known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Davis with technique of

Art Unit: 2424

storing/accessing software processes on a smart card, at least in order to have a more modular system.

Considering claims 30 & 80, Davis discloses on-line services, col. 6, lines 51-65, reads on the tracking program transmitting the collected to the server for storage and analysis, col. 4, lines 55-65.

Considering claims 31 & 81, the JAVA agent and helper/plugin are separate in Davis.

Considering claim 32 & 82, see col. 5, lines 15-28, identifying information reads on the URL of the HTML, col. 8, lines 17-21.

Considering claims 33 & 83, the limitation reads on the discussion in Davis that the tracking program may track different elements of the subscriber interactions such as indicia and/or links selected and/or time, etc.

Considering claims 34-36 & 84-86, the subject matter reads on the operation of the tracking program in Davis receiving the identifying information from the plug-in (viewer 31) of Astiz.

Considering claims 37-40, 43-44, 87-90 & 93-94, the claimed subject matter reads in the API disclosed in Astiz, (col. 11, lines 15-25) which represents a defined interface between a plug-in , i.e., viewer 31 and a browser.

Regarding claims 39 & 89, Davis does not discuss secure communication. Official Notice is taken that at the time the invention was made, the need for secure communication was well known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Davis with the feature of secure communication, at least in order to ensure that only the intended recipient views the transmitted data.

Considering claims 41-42 & 91-92, Davis teaches that the tracking program may interact with the server (i.e., host) using a JAVA applet.

Considering claims 45 & 95, Davis teaches that the tracking program may monitor the user time spent and interactions with a game, which meets the claimed, '*electronic media is a part of a video game*', see col. 13, lines 46-52.

Considering claims 46-47 & 96-97, the subject matter reads on an interactive HTML webpage that is downloaded and viewed in Davis, col. 11, lines 1-24.

Considering claims 49 & 51, the claimed method steps for measuring the exposure of an individual to electronic, corresponds with subject matter mentioned above in the rejection of claims 1 & 50, and is likewise treated.

4. Claims 2 & 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis & Astiz, further in view of Welsh, (U.S. Pat # 5,374,951).

Considering claims 2 & 52, Davis does not discuss any limitation regarding how the panel members are chosen. Nevertheless Welsh, which is in the same field of endeavor of monitoring which content is displayed by a panel member, teaches that the test market are conducted based on the geographic and/or demographic information of the household, see col. 4, lines 15-22. Welsh, also discloses that is preferable to use panelist(s) that have agreed to be monitored. It would have been obvious for one ordinary skill in the art at the time the invention was made, to operate Davis by using panelist(s) that agree to participate, for the well-known purpose of protecting the privacy of persons who do not want to be monitored.

5. Claims 4 & 54 rejected under 35 U.S.C. 103(a) as being unpatentable over Davis & Astiz, further in view of Lu, (U.S. PG-PUB 2003/0110485).

Considering claims 4 & 54, Davis does not discuss that panel member(s) may be chosen as a statistical sample of a population. Nevertheless Lu, which is in the same field of endeavor of monitoring content displayed by a viewer, goes on to teach using a statistical representation of a

population, Para [0110]. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Davis with feature of using a statistical representation of a population, as taught by Lu, at least for the benefit of reducing the actual number of person that need to tracked/monitored.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
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www.uspto.gov

or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7290 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REUBEN M. BROWN whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher Kelley/
Supervisory Patent Examiner, Art Unit 2424